THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P. No.3448 of 1998

Date: 20.06.2007

Between:

The Managing Director, APSRTC
Mushirabad, Hyderabad … Petitioner

AND

The Presiding Officer, Industrial Tribunal
Cum Labour Court, Anahtpur and another … Respondents

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O R D E R:

This writ petition is filed by the Managing Director, APSRTC, Musheerabad, Hyderabad for a writ of Certiorari to quash the award dated 24.02.1997 made in I.D.No.228/93 by the Labour Court, Ananthapur.

Respondent No.2-Union got a dispute, referred to the labour Court, under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short 'the Act') and the questions that have been referred to the Labour Court are as follows:-

1. Whether the Tirumala Tirupathi Devasthanam workers Union, Tirupathi is justified in demanding 18 Festival holidays and National holidays and 5 Optional holidays per year with wages in respect of Ex-Tirumala Tirupathi Devasthanam Employees working in workshop and garages now under APSRTC Depots?

2. If not to what relief the workmen are entitled?

The Second respondent–union claimed before the Labour Court that on 10.08.1975 the transport department of the Tirumala Tirupathi Devasthanams was taken over by the A.P. State Road Transport Corporation ("APSRTC" for short) under an agreement between the T.T.D. and the General Manager of the APSRTC and that

out of 830 employees about 30 employees opted for the service rules of APSRTC while the remaining opted for the application of T.T.D. service Rules. Their contention was that since their services continued to be governed by the T.T.D. rules, the service rules of APSRTC cannot be made applicable to them. It was pleaded that after take over by the APSRTC, the Ex-TTD employees were made to work at three different places of nearby Tirupathi workshops, Tirupathi-II Depot and Thirumala Depot and that the APSRTC after having discussions with both the unions, decided to convert 15 festival holidays and 5 optional holidays (excluding three national holidays) into additional casual leave, in addition to normal 15 days casual leave to Ex-TTD employees working in the Thirupathi-II Depot and Thirumala garages. According to the 2nd respondent-union, this change of holiday pattern affects their service condition and is contrary to the conditions of the agreement, under which, TTD Transport Division was taken over.

The Labour Court accepted the plea of the union and passed its award on 24.02.1997, wherein it was held that the demand of the TTD workers union, Tirupathi in demanding 18 festival holidays, 5 Optional holidays and the three National holidays per year with wages is justified. Questioning the said award, the present writ petition is filed.

Despite service of notice, there is no appearance for respondent No.2-Union.

Sri P. Vinayaka Swamy, learned Standing Counsel for the petitioner stated that the Labour Court has committed a serious error in holding that the Ex-TTD employees, who opted for application of TTD service rules are entitled to the holidays as per the TTD calendar. The learned Counsel drew my attention to clause 13 of the agreement between TTD and APSRTC, under which, the APSRTC had taken over the transport undertaking of Tirumala Tirupathi Devasthanam,

which reads as under:-

> "The Corporation shall take all the remaining workman working in the Transport undertaking of Devasthanam without interruption in their service and assure the continuation of the terms and conditions of their services as to their pay, allowance, Provident Fund contribution and Gratuity after their transfer to the Corporation, in terms of Section 25 FF of the Industrial Disputes Act. The Devasthanam agree to pay such compensation, if any as is liable to be paid to workmen, who do not opt to serve under the Corporation."

Learned Counsel submitted that the protection given for continuing the terms and conditions of their service in accordance with TTD service regulations is confined to their pay, allowance, provident fund contribution and gratuity after they are transferred to the Corporation in terms of Section 25 FF of the Act. He, therefore, submits that the other service conditions such as leave etc., are not protected and that the APSRTC cannot adopt two different yardsticks to the employees in respect of other aspects. I find force in the contention of the learned counsel for the petitioner.

A perusal of the award of the Labour Court shows that the agreement, which governs the rights of the employees, was not placed before it. The Labour Court had no occasion to look into the terms of the agreement in general and clause 13, in particular before holding that the Ex-TTD employees are entitled to have the benefit of the same holiday pattern, which they used to have before their services were transferred to APSRTC. In the rejoinder filed by the APSRTC before the Labour Court, it is submitted as under:-

" Keeping the progress of the discussions between Ex-TTD Unions and the Management in view and also the anticipated sanctioning of additional casual leave in lieu of Festival and Optional Holidays and also in the interest of travelling public and Corporation to run the services without cancellations, the Depot Manager, TPI-II has informed that the Ex-TTD employees working in the garage are not entitled for the 5 optional holidays.

The Maintenance Staff working in TPI-II and TML depots who were transferred from TTD to APSRTRC and opted to TTD Service conditions are entitled to 15 Festival Holidays, 5 Optional Holidays 3 National Holidays besides 15 casual leaves every year. Since TPT-II and TML depots are operating services on TPT-TML Ghat Road for transportation of pilgrims from TPT to TML and vice versa and this traffic will be on high side especially on Holidays and Festival days, the services to the extent required to meet the need could not be provided due to the Maintenance staff working in Depot/garages are allowed Holidays on Festival days. Hence, it is felt necessary that the said maintenance staff of TPT-II and TML depots are allowed additional casual leave in place of the Festival Holidays and 5 optional holidays to meet the exigencies of the Corporation in providing better service to the passengers who are mostly pilgrims and come to Tirupathi from various parts of the country.

As stated supra, since 15 Festival and 5 optional holidays were treated as 20 additional casual leave, the question of denying 5 optional holidays did not arise. There was no change in the applicability of 3 National Holidays. If the Ex-TTD Maintenance Staff in TPT-II and TML are extended 5 optional holidays, for availing the same, one has to apply in writing his intention to avail the holidays. Moreover all the employees entitled for optional holidays are not opting any particular day as holiday.

The pattern of working of workshop and depots is entirely different. While workshop is a production unit, the depot is involved in operation of buses, the maintenance of which on day to-day basis is of paramount importance. The non-maintenance of buses or improper maintenance of buses due to shortage of maintenance staff, on large scale, on account of availing festival or optional holidays, results in dislocation of bus services, on the ghat road between Tirupathi and Tirumala which is against the interest of the pilgrim traffic. As such, the 15 festival holidays and 5 optional holidays were converted as additional casual leaves, leaving apart, 3 National Holidays. In other words, there is no change in the number of days of holidays.

It was mentioned vide para 13 of the agreement between APSRTC and TTD dt:8.8.75, the APSRTC Agreed to continue the terms and conditions of their services to their pay and allowances provident fund and gratuity after their transfer to APSRTC in terms of Section 25 FF of I.D. Act. It was nowhere mentioned in the agreement that protection would be given in respect of availment of leaves and holidays. It is pertinent to mention at this juncture about the comments made by the Industrial Tribunal in its award dated 26.10.88 in I.D.No.43/1986 that the claim of leaves and holidays on pare with TTD employees, was not a service condition and the union cannot ask for protection."

The Labour Court has not taken into consideration the stand of the APSRTC as reflected in the rejoinder filed before it.

On a careful consideration of the entire case, I am of the considered view that the Labour Court has committed a serious error in holding that the demand of respondent No.2-Union is justified and that they are entitled to have the benefit of the holiday pattern of TTD even after they were transferred to APSRTC service. Since the agreement

entered into between APSRTC and TTD does not protect the service conditions of the erstwhile TTD employees qua their leave entitlement, they are not entitled to avail the holidays as are available to the TTD employees.

For the abovementioned reasons, the award of the Labour Court, impugned in this writ petition, is set aside.

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C.V.NAGARJUNA REDDY,J.

Dated:20.06.2007
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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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